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No. 93-687

In the Supreme Court of the United States

OCTOBER TERM, 1993

PUPPOLO FAMILY TRUST, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

THOMAS E. BOOTH
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether petitioners were required to make a threshold showing of standing to contest the forfeiture of property involved in an illegal money-structuring scheme.

2. Whether the district court properly granted the government's motion for summary judgment based on petitioners' lack of standing.

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OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. A1-A2) is unpublished, but the judgment is noted at 995 F.2d 237 (Table). The district court's order granting summary judgment to the United States (Pet. App. B1-B6) is unpublished.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 1993. On September 2, 1993, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including October 29, 1993. The petition was filed on October 28, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The United States filed a civil forfeiture complaint in the United States District Court for the Middle District of Georgia, alleging that $36,222.50 in cash, a Mercury Zephyr, a money order, and 13 cashier's checks had been used in an unlawful money-structuring scheme, in violation of 31 U.S.C. 5324. The district court granted the government's motion for summary judgment. The court of appeals affirmed.

1. On January 3, 1991, Buck Klang purchased cashier's checks for $9,000 from each of six Georgia banks. The same day, he made cash purchases of $9,600 cashier's checks from each of two banks. The payor on each check was the Puppolo Family Trust and the payee was International Collectors Associates (ICA). Klang also purchased an $820 money order payable to ICA. Pet. App. B2.

The next day, Klang made cash purchases of $2,800 cashier's checks from five different banks. Each check was made out from the Puppolo Family Trust to ICA. When Klang tried to purchase a $2,800 cashier's check at yet another bank, an employee told him that he would have to produce identification and that the transaction would be recorded. Klang left the bank without completing the transaction. Pet. App. B2.

Shortly thereafter, Klang was arrested for illegal money structuring. Agents seized the car that Klang used in making the illegal transactions and $36,222.50 in cash. Klang was convicted of illegal money structuring, in violation of 31 U.S.C. 5324. His conviction is on appeal. Pet. App. B2-B3.

2. a. The government filed this action against the cashier's checks, the money order, the currency, and the car under 18 U.S.C. 981(a)(1)(A). That provision autho-

rizes the civil forfeiture of "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of * * * [31 U.S.C.] 5324." Petitioner Puppolo Family Trust filed a claim for the currency, the checks, and the money order. Petitioner Pluscuam Family Trust filed a claim for the car. Pet. App. B3.

The government moved for summary judgment. Sanford Knapp, a trustee for both of the trusts, was the sole witness for petitioners at the hearing on the motion. He testified that the currency used by Klang to buy the cashier's checks belonged to the Puppolo Family Trust. Pet. App. B3.

The Puppolo Family Trust was created on December 18, 1990. Buck Klang, his mother Lenora Klang, and Knapp were its trustees. Buck Klang's wife, Rebecca Klang, was the sole beneficiary. The only property originally part of the trust corpus was an ounce of silver. Pet. App. B3.

According to Knapp, Lenora and Buck decided to give certain bonds to the Puppolo Family Trust. The bonds were to become trust property after being converted to cash. Knapp also testified that the trustees agreed to use the cash from the bonds to purchase rare coins from ICA, but that ICA would accept only cashier's checks for the purchases. No documentation of any agreement among the trustees was submitted at the hearing. Finally, Knapp testified that the Puppolo Family Trust had no knowledge that Klang was buying the cashier's checks in violation of the law. Pet. App. B3-B4.

Knapp also testified that the Mercury Zephyr belonged to the Pluscuam Family Trust. That trust was created on October 5, 1986. Buck Klang and Knapp were the trustees; Rebecca Klang and Ardyth Hinaus were beneficiaries. The Pluscuam Family Trust is listed as the registered owner of the car. Knapp testified that Buck

Klang typically had possession of the car, and no evidence was submitted to show that he used it for anything but personal purposes. Pet. App. B4.

The United States presented IRS agent Kennedy Lockhart as its only witness. According to Lockhart's testimony, Lenora Klang told him that she had given her savings bonds to Buck Klang to cash for his personal business. Pet. App. B4-B5.

b. The district court granted the government's motion for summary judgment, reasoning that petitioners did not have standing to contest the forfeiture. The court ruled that the Puppolo Family Trust did not establish its ownership of the cash, the cashier's checks, or the money order. Without any supporting documentation, Knapp's testimony that the bonds were to become property of the trust was insufficient to establish trust ownership, the court held. The court also found that Klang's designation of the Puppolo Family Trust as the payor on the cashier's checks was insufficient to establish standing. Pet. App. B5.

The court ruled that the Pluscuam Family Trust did not show ownership of the car. Although Knapp testified that the trust purchased the car, he provided no details about the purchase or documentation to support his testimony. Designation of the Pluscuam Family Trust as the car's owner on the title was insufficient to establish ownership, the court held, because there was no evidence to show that the trust exercised dominion and control over the car. Instead, Knapp testified that Buck and his wife repeatedly used the car for personal purposes. No evidence was submitted to show that the car was used for trust purposes. Pet. App. B5-B6.

3. The court of appeals affirmed by judgment order. Pet. App. A1-A2.

ARGUMENT

1. Petitioners argue (Pet. 10-16) that the district court erred in requiring them to make a threshold showing of an interest in the seized property sufficient to satisfy the requirements of Article III.

To invoke the jurisdiction of the federal courts, a litigant must show that he has suffered "injury in fact" redressable by the courts. See *Whitmore* v. *Arkansas*, 495 U.S. 149, 154-155 (1990); *Warth* v. *Seldin*, 422 U.S. 490, 498-499 (1975). Accordingly, "[i]t is well established that in order to contest a forfeiture, a claimant first must demonstrate a sufficient interest in the property to give him Article III standing; otherwise, there is no 'case or controversy,' in the constitutional sense, capable of adjudication in the federal courts." *United States* v. *$38,000.00 in United States Currency*, 816 F.2d 1538, 1543-1544 (11th Cir. 1987); see, *e.g.*, *United States* v. *Ford 250 Pickup 1990*, 980 F.2d 1242, 1246 (8th Cir. 1992); *United States* v. *$38,570 U.S. Currency*, 950 F.2d 1108, 1111 (5th Cir. 1992); *Mercado* v. *U.S. Customs Service*, 873 F.2d 641, 644 (2d Cir. 1989); *United States* v. *U.S. Currency, in the amount of $103,387.27*, 863 F.2d 555, 560 n.10 (7th Cir. 1988) (dictum). Thus, the courts below proceeded appropriately by requiring petitioners to establish a constitutionally sufficient interest in the property seized before permitting them to challenge the forfeiture.[1]

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[1] Petitioners argue (Pet. 11 & n.2) that *United States* v. *Premises Known as 526 Liscum Drive*, 866 F.2d 213 (6th Cir. 1989), conflicts with those cases by holding that the government must show probable cause for the seizure before the claimant is required to establish an ownership interest in the property. The Sixth Circuit, however, explicitly noted that "[s]ince the government has submitted evidence establishing probable cause for the seizure, we

2. Petitioners contend (Pet. 16-23) that even if they were required to establish standing to contest the forfeiture, the district court erred in holding that there was no genuine issue of material fact on that issue.

The district court properly granted the government's motion for summary judgment. In contesting a motion for summary judgment based on standing, a plaintiff "must 'set forth' by affidavit or other evidence 'specific facts'" creating a genuine issue of material fact for trial. *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. 2130, 2137 (1992) (quoting Fed. R. Civ. P. 56(e)). See also *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322-323 (1986). Petitioners did not adduce sufficient facts to raise a genuine issue of fact on the question whether they had an ownership or possessory interest in the assets forfeited.

With respect to the Puppolo Family Trust, petitioners presented no evidence showing that the trust had a sufficient interest in the property to contest the forfeiture. Petitioners presented no admissible evidence establishing that the trust was validly formed under New York law. Gov't C.A. Br. 23-25. Moreover, although the Puppolo Family Trust was listed as remitter on the cashier's checks seized from Buck Klang, standing cannot be established by pointing to evidence of bare legal title to assets whose forfeiture is being contested. See *United States* v. *Ford 250 Pickup 1990*, 980 F.2d at 1246; *United States* v. *A Single Family Residence & Real Property*, 803 F.2d 625, 630 (11th Cir. 1986); *United States* v. *One 1978 Piper Navajo PA-31, Aircraft*, 748 F.2d 316, 319 (5th Cir. 1984). "[P]eople engaged in illegal activities often attempt to disguise their interests in property by placing title in someone else's name," and

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are not presented with the question of whether or not standing is a 'threshold' issue." *Id.* at 216 n.2.

"possession of bare legal title by one who does not exercise dominion and control over the property is insufficient * * * to establish standing to challenge a forfeiture." *United States* v. *A Single Family Residence & Real Property*, 803 F.2d at 630. The government introduced evidence showing that Lenora Klang gave savings bonds to her son Buck for his personal use. Pet. App. B4-B5. Petitioners produced no admissible evidence showing that Buck Klang ever relinquished control of the savings bonds to the trust, or that the Puppolo Family Trust ever had dominion or control over the defendant properties. See Gov't C.A. Br. 25-28.

For similar reasons, petitioners did not create a genuine issue of material fact concerning the Pluscuam Family Trust's asserted interest in the Mercury Zephyr. Knapp's testimony established no more than that the trust had bare legal title to the car. Gov't C.A. Br. 21-22. As discussed, that fact alone is insufficient to establish ownership for purposes of Article III standing. In addition, Knapp's testimony did not show that the vehicle was used for trust purposes; rather, it established that Buck Klang and his wife used the vehicle for personal business.[2] *Id.* at 22-23. Accordingly, the evidence created no genuine issue of material fact regarding the Pluscuam Family Trust's ownership of the Mercury Zephyr, and petitioners' fact-intensive claim to the contrary does not warrant this Court's review.

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[2] Petitioners contend (Pet. 18-19) that the district court weighed the evidence of both parties and evaluated the credibility of Knapp's testimony. The district court's order, however, demonstrates that it properly determined that petitioners submitted insufficient evidence to establish an ownership interest in the property forfeited.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

JO ANN HARRIS
Assistant Attorney General

THOMAS E. BOOTH
Attorney

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